



**MILPITAS CITY COUNCIL MEETING AGENDA  
SEPTEMBER 19, 2006**

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**5:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)  
455 E. CALAVERAS BOULEVARD**

**SUMMARY OF CONTENTS**

- I. ROLL CALL (5:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to California Government Code §54956.9(a))  
City of Milpitas vs. Turner Construction et al., Santa Clara County Superior Court  
Case No. 103CV815946 Consolidated with Case No. 103CV008400
  - 2) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
(Pursuant to California Government Code §54957.6)  
City Negotiators: Carmen Valdez and Art Hartinger  
Employee Organizations: Laborers' International Union of North America (LIUNA), Milpitas Professional and Technical Group (ProTech), and International Association of Fire Fighters (IAFF)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
  - 3) PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT**  
(Pursuant to Government Code §54957)  
Title: City Manager (discussion of applications)
- III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code §54957.1, including the vote on abstention of each member present**
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF MINUTES (September 5 and 12, 2006)**
- VII. SCHEDULE OF MEETINGS**
- VIII. PRESENTATIONS**

Proclamations:

  - Pollution Prevention Week, September 18-24, 2006
  - Family Day – A Day to Eat Dinner with Your Children, September 25, 2006

Presentation:

CA Assemblymember Alberto Torrico – General Legislative Update

**IX. PUBLIC FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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**X. ANNOUNCEMENTS**

**XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**

**XII. APPROVAL OF AGENDA**

**XIII. CONSENT CALENDAR (Items with Asterisks)**

**XIV. PUBLIC HEARING**

- 1. Adoption of The Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) FY 2005-2006 (Staff Contact: Felix Reliford, 586-3071 and Gloria Anaya, 586-3075)**

**XV. UNFINISHED BUSINESS (NONE)**

**XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor/Chair**

**RA2. Roll Call**

**RA3. Approval of Minutes (September 5, 2006)**

**RA4. Approval of Agenda and Consent Calendar**

**Public Hearing**

**RA5. Waive First Reading and Introduce Ordinances No. 192.16 And No. 192.17 Amending the Redevelopment Plan For the Great Mall Project Area and Project Area No. 1 (Staff Contact: Diana Whitecar, 586-3059)**

**RA6. Approve Project Stabilization Agreement for the New Library, Project No. 8162 (Staff Contact: Mark Rogge 586-3403)**

**\*RA7. Adopt Resolution Granting Initial Acceptance: Storm Water Pump Station Improvements Replacement Roofs at Bellew & Penitencia, Project No. 8106 and Oak Creek Pump Station Improvements, Project No. 8140 (Staff Contact: Jeff Leung, 586-3326)**

**\*RA8. Approve Contract Change Order: North Main Street Utilities Project—Weller Lane To Carlo Street, Underground Utility District No. 5, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

**RA9. Agency Adjournment**

**XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES**

## City Council

2. Consider Endorsement of Ballot Initiative on the November 7 ballot: Proposition 1C regarding funding for affordable housing (Contact: Mayor Esteves, 586-3029)
3. Discussion of Sylvia Ave. Neighbor Concerns with regard to KB Home Project on Abel St. (Contact: Mayor Esteves, 586-3029)
- \* 4. Approve Mayor Esteves' Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)

## Arts Commission

- \* 5. Approve Two Cultural Arts Support Program Grants for 2006-07 Funding Cycle (Staff Contact: Renee Lorentzen, 586-3286)

## **XVIII. NEW BUSINESS**

6. Consideration of the City Council Meeting Schedule for 2007 (Staff Contact: Mary Lavelle, 586-3001)
- \* 7. Approve Site and Architectural Approval Amendment No. SA2006-41 for the Construction of New Accessory Structures, including a Deck, Gazebo, Arbor and Trellis, Addition of New Lighting and the Relocation of the Perimeter Fence for a Hillside Residence (Staff Contact: Momo Ishijima, 586-3274)
- \* 8. Approve Water Supply Assessment And Written Verification For Sufficient Water Supply For Transit Area Specific Plan (Staff Contact: Marilyn Nickel, 586-3347)
- \* 9. Approve Funding for the Milpitas Community Concert Band's 2006-07 Season and Arts Day Milpitas 2006 (Staff Contact: Renee Lorentzen, 586-3286)

## **XIX. ORDINANCES (NONE)**

## **XX. RESOLUTIONS**

- \* 10. Adopt Resolution Amending List of Designated Full Disclosure Positions for the City of Milpitas' Conflict of Interest Code (Staff Contact: Mary Lavelle, 586-3001)
- \* 11. Adopt Resolution Granting Initial Acceptance: Sewer Deficiency and Structural Correction Program (Pipe Bursting/Reaming), Project No. 6073 (Staff Contact: Julie Waldron-Martin, 586-3314)

## **XXI. BIDS AND CONTRACTS**

- \* 12. Approve Assignment and Assumption Agreement Between The City of Milpitas, Veritas Operating Corp. and Wells Fargo Bank Northwest, National Association (Staff Contact: Momo Ishijima, 586-3274)
- \* 13. Approve Assignment and Assumption Agreement and Certificate Of Satisfaction Between The City of Milpitas, Veritas Operating Corp. and BRE/Milpitas, L.L.C. (Staff Contact: Momo Ishijima, 586-3274)
- \* 14. Award Construction Contract to Columbia Electric for Traffic Signal Modification at So. Main Street & Montague Expressway, Project No. 4231 (Staff Contact: Jaime Rodriguez, 586-3335)

- \* 15. **Approve Agreement Amendment No. 4 With HMM Engineers and Appropriate Grant Funding, South Park Victoria Drive Pavement Rehabilitation, Project No. 4225 (Staff Contact: Greg Armendariz, 586-3317)**
- \* 16. **Approve the Subdivision Improvement Agreement, Final Map and Operation and Maintenance Agreement for KB Home, Tract 9697, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)**
- \* 17. **Award the Bid for Public Access Television Studio Equipment (Invitation for Bid 3397A) to Video Media, Inc. (Staff Contact: Chris Schroeder, 586-3161)**

**XXII. CLAIMS AND DEMANDS**

- \*18. **Approve One Payment Request (Staff Contact: Chris Schroeder, 586-3161)**

**XXIII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, OCTOBER 3, 2006 AT 7:00 P.M.**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035  
E-mail: [rpioroda@ci.milpitas.ca.gov](mailto:rpioroda@ci.milpitas.ca.gov) / Fax: 408-586-3030 / Phone: 408-586-3040

*A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), select Open Government Ordinance under News Features.*

**BECOME A CITY COMMISSIONER!**

Currently, there are openings on the following Commissions:

*Economic Development Commission (Hotel Rep)*

*Community Advisory Commission*

*Mobile Home Park Rental Review Board*

*Sister Cities Commission*

*Youth Advisory Commission*

Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or outside the City Council Chambers.  
Contact the City Clerk's Office (586-3003) for information.

## **AGENDA REPORTS**

### **XIV. PUBLIC HEARING**

- 1. Adoption of the Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) FY 2005-2006 (Staff Contact: Felix Reliford, 586-3071 and Gloria Anaya, 586-3075)**

**Background:** The Consolidated Annual Performance Evaluation Report (CAPER) is a HUD mandated report that describes the City's one-year CDBG Programs and Activities undertaken during the past CDBG program year, 2005-2006. The CAPER also evaluates the City's overall progress in carrying out those priority projects that were identified in the approved Five-Year Consolidated Plan and One-Year Action Plan.

A copy of the CAPER has been included in the Council's agenda packet. The report identifies the following major accomplishments:

- Proposed and/or approval of 4,711 new housing units to the Milpitas housing stock, including approximately 1,233 new affordable rental and for-sale housing units for very low, low, and moderate-income households;
- Exceeding the goals of 200-250 new affordable housing units identified the Five-Year Consolidated Plan (2002-2007) by 950+ affordable units;
- Implementation of the Consolidated Plan (2002-2007), Midtown Specific Plan, General Plan Housing Element policies and goals to support and encourage affordable housing opportunities for Milpitas residents;
- Completion of Phase I and Approval of Phase II of the Transit Area Specific Plan to allow higher densities (5,000-7,000 new dwelling units) with ¼ mile of Light Rail and future Montague/ Capitol BART Transit Stations;
- Financial assistance for affordable housing projects, Interim Senior Center Improvements and Teen Homeless Shelter;
- Funding for acquisition of Single-Family Home to accommodate 5 extremely low-income seniors;
- Funding to assist 23 different public services agencies and housing providers; and
- Provided \$536,000, in CDBG funds to assist over 5,000+ Milpitas residents.

The CAPER has been advertised for public review and comments for 15 days (August 24-September 8, 2006). Copies of the CAPER were sent to all Service and Housing Providers that received CDBG funds from the City and other interested parties. Copies were also made available at City Hall and Public Library. Staff has not received any public comments.

**Recommendation:**

1. Close the public hearing.
2. Adopt the Consolidated Annual Performance Evaluation Report (CAPER) for FY 2005-2006.

### **XV. UNFINISHED BUSINESS (NONE)**

### **XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor/Chair**

**RA2. Roll Call**

**RA3. Approval of Minutes (September 5, 2006)**

**RA4. Approval of Agenda and Consent Calendar**

**Public Hearing**

- RA5. Waive First Reading and Introduce Ordinance Nos. 192.16 and No. 192.17 Amending the Redevelopment Plan For The Great Mall Project Area and Project Area No. 1 (Staff Contact: Diana Whitecar, 586-3059)**

**Background:** At the City Council meeting on August 1<sup>st</sup> staff indicated that two ordinances would be presented to amend both the Great Mall and Project Area No. 1 Redevelopment Plans. The purpose of these proposed amendments is to extend the life of the two project areas, with the exception of the Midtown area added in 2003, as permitted by SB 1096. This 2004 legislation allows each Agency that made Educational Revenue Augmentation Fund (ERAF) payments in Fiscal Years 2004-05 and 2005-06 to extend the life of the project areas by the number of years the payment were made, or in the case of the Milpitas Agency, for two additional years. SB 1096 specifically limits the time extensions to those projects areas that have less than 20 remaining years of effectiveness; thus, it does not apply to the Project Area No. 1 Midtown added area.

Notices of the public hearing and the proposed plan amendments have been sent to the affected taxing agencies with thirty days advanced notices and publicized in the Milpitas Post on September 7<sup>th</sup>. Staff has not received any comments from the taxing agencies regarding the proposed amendments.

**Recommendation:**

1. Close Public Hearing after receiving comments.
2. Waive First Reading Beyond the Title of Ordinances No. 192.16 and No. 192.17.
3. Introduce Ordinances No. 192.16 and No. 192.17 amending the Great Mall Project Area and Project Area No. 1 Redevelopment Plans to extend the life of the two project areas, as allowed by Senate Bill 1096.

- RA6. Approve Project Stabilization Agreement for the New Library, Project No. 8162 (Staff Contact: Mark Rogge 586-3403)**

**Background:** On April 18, 2006 the City Council/RDA Board authorized staff to negotiate a Project Stabilization Agreement with the local Building Trades for construction of the Library. Staff has negotiated with the Santa Clara & San Benito Counties Building & Construction Trades Council, with assistance from Michael Vlaming, president of Scarth-Lyons & Associates, Labor Relations Consultants, and review from the City Attorney's office. The Project Stabilization Agreement (PSA) is a tool to promote positive labor relations, prevent work stoppages or strikes, and create a communications forum to proactively deal with issues that may arise. These measures are intended to stabilize the work environment facilitating the diligent prosecution of the work to completion.

While the PSA is similar to those held by the County of Santa Clara and other agencies, a special highlight of the Milpitas Library PSA is a provision to provide an educational opportunity associated with the library construction. The Building Trades would set aside time to demonstrate their particular expertise to Milpitas students and to have an informational program leading to apprenticeship recruitment through the Milpitas High School. Staff would coordinate this effort with the Milpitas Unified School District, the library general contractor and the Building Trades Council.

Staff recommends approval of the Project Stabilization Agreement (PSA) for the Milpitas Public Library, Project No. 8162. Once approved and executed by each of the building trades, the PSA will be included in the library project bid documents, requiring the successful bidder to also execute the agreement.

**Recommendation:**

1. Approve the Project Stabilization Agreement for the Milpitas Public Library, Project No. 8162.

2. Direct staff to work with the Building Trades Council, Milpitas Unified School District, and the library contractor to develop related educational opportunities and report back to the Library Subcommittee and City Council.

**\*RA7. Adopt Resolution Granting Initial Acceptance: Storm Water Pump Station Improvements Replacement Roofs at Bellew & Penitencia, Project No. 8106 and Oak Creek Pump Station Improvements, Project No. 8140 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** This project provided new roofs, skylights and a fan for the Storm Water Pump Stations. City Council awarded the project to All Seasons Roofing Services on April 18, 2006. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to \$9,436.10, 10% of the contract amount.

**Recommendation:** Adopt resolution granting initial acceptance of Project No. 8140, subject to the one-year warranty period and reduction of the faithful performance bond to \$9,436.10.

**\*RA8. Approve Contract Change Order: North Main Street Utilities Project—Weller Lane To Carlo Street, Underground Utility District No. 5, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

**Background:** On February 7<sup>th</sup>, 2006 the City Council/RDA Board awarded the construction contract for this project to D'Arcy & Harty Construction, Inc. This \$3,267,704 project provides for the installation of new and up-sized underground sewer, storm, water, power, gas, phone, and cable utilities to serve the new Milpitas library, east parking garage, and other Midtown development projects such as the DeVries Place senior housing, County health center, and certain improvements for the Apton Plaza, private development, just north of the library site. The work has been completed and the project will be recommended for initial acceptance.

A contract change order is recommended to provide compensation for additional work at the storm drain outfall to Wrigley-Ford Creek to install jute netting along the bank adjacent to the outfall work and to hydro-seed disturbed areas was required to comply with permit requirements. The contractor also performed extra work to clean and videotape an existing storm drain main near the 237 off-ramp that was plugged with sediment, and to provide additional excavation, backfill, and pipe for the repair of a broken water main at Carlo. This change order for this work is estimated not to exceed \$69,670.14 and there are sufficient funds in the N. Main Street Utilities project budget for this work.

**Recommendation:** Authorize staff to approve a contract change order in the amount of \$69,670.14 to D'Arcy & Harty Construction, Inc. for additional work for N. Main Street Utilities, Project No. 8153.

**RA9. Agency Adjournment**

**XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES**

**City Council**

**2. Consider Endorsement of Ballot Initiative on the November 7 ballot: Proposition 1C regarding funding for affordable housing (Contact: Mayor Esteves, 586-3029)**

**Background:** Mayor Esteves received a request from the Silicon Valley Leadership Group to consider support of the ballot proposition. Material is included in the Council agenda packet describing the bond item on the ballot in the fall election. Mayor Esteves requests that the City Council consider taking a position.

**Recommendation:** Discuss merits of Proposition. If appropriate, move to endorse statewide Proposition 1C.

**3. Discussion of Sylvia Ave. Neighbor Concerns with regard to KB Home Project on Abel St. (Contact: Mayor Esteves, 586-3029)**

**Background:** At prior City Council meetings, there were concerns raised by neighbors and discussion regarding the construction project on Abel St., the KB Home Terra Serena project. This location abuts Sylvia Ave. single family home residents, who brought to the City's attention issues about noise, fencing, work hours and views. Letters and information from homeowners, presented to the Mayor, are included in the Council agenda packet.

**Recommendation:** Hear report of Mayor Esteves.

**\*4. Approve Mayor Esteves' Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)**

**Background:** Mayor Esteves recommends the following Milpitas residents be appointed to Commission as noted below:

**Youth Advisory Commission:**

Re-appoint Aditya Ullal to a term expiring September 2007.  
Re-appoint Joseph Hall to a term expiring September 2007.  
Re-appoint Lorden Fok to a term expiring September 2007.  
Re-appoint Nida Asif to a term expiring September 2007.  
Re-appoint Jay Kumar to a term expiring September 2007.

Appoint Jason Nguyen (current Alternate No. 1) as a voting member to a term expiring September 2007.  
Appoint Josephine Fong (current Alternate No. 3) as Alternate No.1 to a term expiring September 2007.  
Appoint Sareen Sandhu (current Alternate No. 4) as Alternate No. 2 to a term expiring September 2007.

Appoint Brian Tran to a term expiring September 2007.  
Appoint Phuong La to a term expiring September 2007.  
Appoint Chih-Ming Hsieh as Alternate No. 3 to a term expiring September 2007.

**Recommendation:** Move to approve the Mayor's recommended Commission appointments and re-appointments.

**Arts Commission:**

**\* 5. Approve Two Cultural Arts Support Program Grants for 2006-07 Funding Cycle (Staff Contact: Renee Lorentzen, 586-3286)**

**Background:** The Cultural Arts Support Program (CASP) is a competitive grant program designed to increase and deepen participation in arts and cultural activities for the Milpitas community. CASP also encourages coalitions and collaborations between artists, art organizations and other sectors to infuse the entire community with art activities.

At the August 1, 2006, City Council meeting, the Council directed the Arts Commission to review and recommend funding for an additional two Cultural Arts Support Program Grant Applications received from GENCO and the Calaveras Repertory Theatre. Both applications were originally not considered for the CASP 2006-07 Funding Cycle due to not following submittal guidelines. The Arts Commission CASP Subcommittee reviewed the applications at an August



15, 2006 meeting and recommended to the Arts Commission that the two applicants receive grant specified In-Kind Services and monetary amounts, adding up to the remaining \$2,620.00. The CASP Subcommittee presented its recommendations to the Arts Commission at its August 28, 2006 meeting.

Included in the Council's agenda packet are the list of applicants, their recommended amount of funding and use of in-kind services, and the Unapproved Minutes from the Arts Commission's August 28, 2006, meeting.

**Recommendation:** Approve the Arts Commission's recommendations for two Cultural Arts Support Program grants to GENCO and Calaveras Repertory Theatre for FY 2006-07 in the amount of \$2,620.

## **XVIII. NEW BUSINESS**

### **6. Consideration of the City Council Meeting Schedule for 2007 (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** In 2007, the first Tuesday in the month of July will fall on the eve of the national Independence Day Holiday, July 4<sup>th</sup>. Milpitas City Council has traditionally adjusted its July meeting schedule, by canceling the second meeting of the month. In 2006, both July meetings were canceled.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2007. Several options are available for your discussion and selection.

**Recommendation:** Move to adopt one of the following options:

1. Cancel 1<sup>st</sup> meeting in July (Tuesday, July 3, 2007)
2. Cancel 2<sup>nd</sup> meeting in July (Tuesday, July 17, 2007)
3. Cancel both meetings of the month in July 2007

### **\* 7. Approve Site and Architectural Approval Amendment No. SA2006-41 for the Construction of New Accessory Structures, including a Deck, Gazebo, Arbor and Trellis, Addition of New Lighting and the Relocation of the Perimeter Fence for a Hillside Residence (Staff Contact: Momo Ishijima, 586-3274)**

**Background:** The applicant is requesting the removal of the existing spa, a portion of the concrete patio, arbor and iron fencing, the relocation of the outdoor barbeque and the installation of new accessory structures, including a deck, gazebo, arbor and trellis, slate patio, pavers, dry creek, waterfall, footbridge, putting green and the addition of new lighting and perimeter fence. The accessory structures range from 9 feet 10 inches to 12 feet 6 inches in height with a cumulative size of 1,278 square feet. The accessory structures will be placed in a flat area immediately behind the existing residence and will not impair the view, light or air of the adjacent neighbors. The applicant is requesting a new 6-foot perimeter fence comprised of openwork galvanized iron atop a concrete retaining wall and posts covered with stucco and gray slate tile. The applicant is also requesting new outdoor lighting, which includes, 27 path lights, 18 spotlights for trees and 4 post lights. Staff proposes several conditions of approval that the applicant is in agreement with that relate to lighting levels (refer to attached Planning Commission report). The Planning Commission reviewed this project at its August 23, 2006 meeting and recommends approval to the City Council.

**Recommendation:** Approve Site and Architectural Approval Amendment No. SA2006-41 based on the Finding and Recommended Special Conditions, included in the Council's agenda packet.

### **\* 8. Approve Water Supply Assessment And Written Verification For Sufficient Water Supply For Transit Area Specific Plan (Staff Contact: Marilyn Nickel, 586-3347)**

**Background:** State Law (SB 610) requires a water supply assessment be completed and approved before proceeding with any development with 500 or more dwellings. The assessment must be included in the California Environmental Quality Act document for the project. Written verification of sufficient water supply is also required under SB 221. A water supply assessment was requested for the Transit Area Specific Plan, mixed use development, which includes 7,186 residential units, 813,344 sq feet of office, 520,026 sq feet of retail mixed use, 351 hotel rooms, a school, and parks/plazas. The development consists of 337 net acres bounded by the Great Mall to the North, Penitencia Creek to the West, Berryessa Creek to the East, and the City of San Jose to the South.

The proposed project area will receive water from the Santa Clara Valley Water District (SCVWD), one of the two wholesalers that supply water to Milpitas. Staff has completed a water supply assessment using the City of Milpitas 2005 Urban Water Management Plan, City of Milpitas 2002 Water Master Plan, and the SCVWD's 2005 Urban Water Management Plan. SCVWD has reviewed the documents and has concurred that wholesale water supply can be provided. Based on the review, staff has determined that there is sufficient water to supply to the proposed project. Copies of letters of confirmation from the SCVWD, Staff Water Supply Assessment Report, and SB 610 and SB 221 statutes are included in the Council packet.

**Recommendation:** Approve Water Supply Assessment for the Transit Area Specific Plan.

\* 9. **Approve Funding for the Milpitas Community Concert Band's 2006-07 Season and Arts Day Milpitas 2006 (Staff Contact: Renee Lorentzen, 586-3286)**

**Background:** At the September 5, 2006, Finance Subcommittee meeting, the Subcommittee discussed funding for the Milpitas Community Concert Band's 2006-07 Season and for the Arts Day Milpitas 2006 event, to be coordinated by the Arts Commission. After receiving both the Arts Day and Community Band's previous budgets and community input, the Finance Subcommittee recommended funding the Arts Day Milpitas 2006 in the amount of \$2,000.00 from the Commissioners' Recognition Event Budget and to fund the Milpitas Community Concert Band in the amount of \$4,260.00 from the City Council's Community Promotions Budget. Should the Council approve the funding, the undesignated community promotion budget will have a \$5,240 balance.

**Recommendation:** Approve the Finance Subcommittee's recommendation to fund Arts Day Milpitas in the amount of \$2,000 (via transfer of that amount from Commissioner Recognition Event budget to the Recreation budget) and to fund the Milpitas Community Concert Band in the amount of \$4,260 (via transfer of that amount from Council Community Promotions budget to the Recreation budget).

**XIX. ORDINANCE (NONE)**

**XX. RESOLUTIONS**

\* 10. **Adopt Resolution Amending List of Designated Full Disclosure Positions for the City of Milpitas' Conflict of Interest Code (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** California's Political Reform Act requires that the City Council review the City's Conflict of Interest Code biennially (in even-numbered years) to determine if it is up to date or if changes are necessary. The City's Conflict of Interest Code was last reviewed and amended on September 7, 2004. There have been changes to job titles during the last two years, which require that the Code's list be updated appropriately.

Also, one new City Committee has been created requiring disclosure of the members.

A resolution amending Appendix A to the original resolution adopting the City's Conflict of Interest Code, to incorporate the changes, is included in the Council's agenda packet.

**Recommendation:** Adopt Resolution updating the list of positions required to file under the City's Conflict of Interest Code.

- \* 11. **Adopt Resolution Granting Initial Acceptance: Sewer Deficiency and Structural Correction Program (Pipe Bursting/Reaming), Project No. 6073 (Staff Contact: Julie Waldron-Martin, 586-3314)**

**Background:** The project provides a replacement of an existing sanitary sewer pipe by bursting and pulling a new 255 feet of 8 inch high-density polyethylene pipe. City Council awarded the project to Pacific Trenchless, Inc. on May 16, 2006. The project has been successfully completed. Staff recommends that Council grant an initial acceptance and authorize the reduction of the contractor's faithful performance bond to \$12,954.00, 10% of the contract amount.

**Recommendation:** Adopt resolution granting initial acceptance of Project No. 6073, subject to the one-year warranty period and reduction of the faithful performance bond to \$12,954.00.

## **XXI. BIDS AND CONTRACTS**

- \* 12. **Approve Assignment and Assumption Agreement Between the City of Milpitas, Veritas Operating Corp. and Wells Fargo Bank Northwest, National Association (Staff Contact: Momo Ishijima, 586-3274)**

**Background:** On March 21, 2000, the City Council adopted Ordinance 38.755 approving a Development agreement pertaining to McCarthy Ranch. McCarthy then sold a portion of the property subject to the Development Agreement to Veritas Operating Corporation. Veritas, consistent with the terms of the agreement, assumed McCarthy's rights and obligations under the Development Agreement. Veritas, then executed an agreement with First Security Bank, National Association, whereby Veritas' rights and obligations under the Development Agreement was assumed by First Security. On August 15, 2000, the City Council approved the Assignment and Assumption Agreement and Certificate of Satisfaction between the City of Milpitas, Veritas Operating Corporation and First Security Bank, National Association. Veritas Operating Corporation and Wells Fargo Bank Northwest, National Association, known as and successor to First Security Bank, National Association, have terminated their agreement and now request to assign the Veritas Development Agreement obligations back to Veritas Operating Corporation and release Wells Fargo Bank Northwest, National Association from responsibility. Staff has reviewed the Agreement, included in the Council's agenda packet and determined that the Agreement accurately reflects the obligations of the parties. Pursuant to Ordinance No. 38.755 and State Law related to Development Agreements, the City Council must authorize reassignment of the agreement from one property owner to another property owner when a purchase transpires.

**Recommendation:** Authorize the City Manager to execute the Assignment and Assumption Agreement (Veritas and Wells Fargo), subject to approval as to form by the City Attorney.

- \* 13. **Approve Assignment and Assumption Agreement and Certificate of Satisfaction Between the City of Milpitas, Veritas Operating Corp. and BRE/Milpitas, L.L.C. (Staff Contact: Momo Ishijima, 586-3274)**

**Background:** On March 21, 2000, the City Council adopted Ordinance 38.755 approving a Development agreement pertaining to McCarthy Ranch. McCarthy then sold a portion of the property subject to the Development Agreement to Veritas Operating Corporation. Veritas, consistent with the terms of the agreement, assumed McCarthy's rights and obligations under the Development Agreement. Veritas has sold the project site, 65 acres, subject to the Development Agreement, to BRE/Milpitas, L.L.C. BRE/Milpitas, consistent with the agreement will assume Veritas' rights and obligations under the Development Agreement. Staff has reviewed the

Agreement, included in the Council's agenda packet and determined that the Agreement accurately reflects the obligations of the parties. Pursuant to Ordinance No. 38.755 and State Law related to Development Agreements, the City Council must authorize reassignment of the agreement from one property owner to another property owner when a purchase transpires.

**Recommendation:** Authorize the City Manager to execute the Assignment and Assumption Agreement and Certificate of Satisfaction (Veritas and BRE/Milpitas), subject to approval as to form by the City Attorney.

\* **14. Award Construction Contract: Traffic Signal Modification at So. Main Street & Montague Expressway, Project No. 4231 (Staff Contact: Jaime Rodriguez, 586-3335)**

**Background:** This project includes the addition of a second southbound left-turn lane from So. Main Street onto Montague Expressway, and is being provided in efforts to be proactive to the future traffic demands that will result from the large number of high-density housing projects along Abel Street and So. Main Street. This project is being coordinated with and supported by the County of Santa Clara.

On August 1, 2006, the Council approved the project plans and specifications and authorized the advertisement of bid documents for the solicitation of construction proposals. The scope of work includes the installation of underground conduits, pull boxes, traffic signal conductors, and traffic loop detectors, as well as the modification of median islands on Montague Expressway. The Engineer's Estimate for this project is \$40,000.

The project was advertised in the Milpitas Post and on the City's web page. Three sealed bid proposals were received and opened on September 12, 2006. The bid results are as follows:

<b>No.</b>	<b>Bidder</b>	<b>Bid Amount</b>
	<b><i>Engineer's Estimate:</i></b>	<b><i>\$40,000</i></b>
1.	Columbia Electric	\$49,000
2.	Power Engineering	\$60,440
3.	St. Francis Electric	\$83,425

Sufficient funds are available to award this project from the project budget and CP4238 – Traffic Signal Modifications 2007. Award is recommended to the low bidder, Columbia Electric.

**Recommendation:** Award Construction Contract for the Traffic Signal Modification at So. Main Street & Montague Expressway, Project No. 4231, to Columbia Electric in the amount of \$49,000.

\* **15. Approve Agreement Amendment No. 4 with HMH Engineers and Appropriate Grant Funding, South Park Victoria Drive Pavement Rehabilitation, Project No. 4225 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** On February 15, 2005, the City Council awarded a consultant contract to HMH Engineers for the design of roadway reconstruction of South Park Victoria Drive between Calaveras Boulevard and Big Basin Drive. Specifically, the work includes placing rubberized asphalt concrete overlay, localized full depth asphalt concrete repairs, cold planning, replacement of traffic detector loops, sealing of cracks and replacement of painted markings.

Staff recommends that HMH Engineers perform additional services to provide investigation and estimation of signal modifications for pole foundation replacement at Calaveras Boulevard due to existing cracked foundations, modifying the City General and Special Condition Specifications to meet federal funding requirements, and to attend a project community meeting and prepare displays. An agreement amendment is proposed for these additional services based on time and materials not to exceed \$16,000.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

The California Integrated Waste Management Board (CIWMB) has just granted the City \$17,500 from the Rubberized Asphalt Concrete Grant Program toward this project. A budget appropriation of this grant funding to South Park Victoria Drive Pavement, Project No. 4225 is recommended. This brings the total of grants received for this project to \$1,212,500 (Federal Surface Transportation Program (STP) Funds - \$1,195,000 and CIWMB, Rubberized Asphalt Concrete Grant Program - \$17,500).

**Recommendation:**

1. Approve the agreement amendment No. 4 with HMH Engineers, in the amount of \$16,000.00, subject to approval as to form by the City Attorney.
2. Appropriate the California Integrated Waste Management Board grant of \$17,500 to Project No. 4225.

- \* **16. Approve Subdivision Improvement Agreement, Final Map and Operation and Maintenance Agreement for KB Home, Tract 9697, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** This 61-unit single family and 96-town homes development will be served by public utilities located within private streets and public utility easements, except for the storm drainage system, which will be privately maintained. The final map is ready for approval, excerpts of the final map are included with the Council packet and a complete set of the final map is available for review in the office of the City Engineer. The operation and maintenance agreement covers the maintenance of the storm water post construction Best Management Practices that needs to be maintained annually by the homeowners association.

**Recommendation:**

1. Approve the final map.
2. Authorize the City Manager to execute the secured subdivision improvement agreement and operation and maintenance agreement, subject to approval of the City Attorney as to form.

- \* **17. Award the Bid for Public Access Television Studio Equipment (Invitation for Bid 3397A) to Video Media, Inc. (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** On August 21, 2006, staff went out for bids for television studio equipment for the public access studio being built in City Hall. Bids were advertised in the Post, mailed to six vendors on the City's vendor data base, and posted on the City's website.

One vendor responded:

	<u>Base Bid</u>	<u>Option Package</u>	<u>Total</u>
VMI	\$199,202.97	\$27,607.51	\$226,810.48

(There is sufficient funding in Capital Improvement Project CP3397, PEG Access Support, for this purchase.)

**Recommendation:** Award the bid for the Public Access Television Studio Equipment to Video Media, Inc. in the not to exceed amount of \$226,810.48.

**XXII. CLAIMS AND DEMANDS**

- \* **18. Approve One Payment Request (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** In accordance with Ordinance No. 23.10 of the Municipal Code, Purchasing has prepared the following purchasing request over \$20,000 for approval:

1. \$24,500 to American Asphalt R & R Co., Inc. for emergency crack repair to the Berryessa Creek Trail between Hillview Drive and Abel Street. The existing path has many wide and deep cracks that need to be repaired to improve the path condition for pedestrians and bicyclists and to prevent trip and fall accident claims. Public Works Maintenance staff recommended that the crack seal work on the trail be done as emergency work and Engineering staff concurs. The work was performed as an emergency under section I-2-3.10 of the Municipal Code "Emergency Authority of Purchasing Agent."

(Funds are available in Capital Improvement Project CP5074 Berryessa Creek Trail for these repairs).

**Recommendation:** Approve payment to American Asphalt R & R Company for \$24,500.

**XXIII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, OCTOBER 3, 2006 AT 7:00 P.M.**